



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DMP:ICR/SKW/EHS
F. #2022R00326

*271 Cadman Plaza East
Brooklyn, New York 11201*

July 20, 2022

By Email and ECF

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Federal Defenders of New York
One Pierrepont Plaza, 16th Floor
Brooklyn, New York 11201

Re: United States v. Frank James
Criminal Docket No. 22-214 (WFK)

Dear Counsel:

Enclosed please find the government's discovery in accordance with Rule 16 of the Federal Rules of Criminal Procedure. The discovery is being produced pursuant to the Protective Order entered by the Court on July 15, 2022. The government also requests reciprocal discovery from the defendant.

I. The Government's Discovery

A. Statements of the Defendant

Bates Numbers	Description
FJ_0007453 - FJ_0007455	Videotaped post-arrest statements made by the defendant on or about April 13, 2022.
FJ_0001889; FJ_0001901 -FJ_0001902	FBI reports reflecting defendant's statements and related notes.
FJ_0001890	An advice-of-rights form signed by the defendant on or about April 13, 2022.
FJ_0009858	Open-source videos of the defendant collected from YouTube.
FJ_0004438	New York City Police Department ("NYPD") body camera video dated on or about April 12, 2022 and April 13, 2022, which have been marked Sensitive Discovery Material . Videos that have been identified thus far as including the

Bates Numbers	Description
	defendant and his statements have been separated into a subfolder within FJ_0004438.

B. The Defendant's Criminal History

Bates Numbers	Description
FJ_0001129 - FJ_0001292	The defendant's criminal history reports.

C. Documents and Tangible Objects

Bates Numbers	Description
FJ_0000007 – FJ_0000043	Records from 1&1.
FJ_0000044	911 calls dated on or about April 12, 2022, which have been marked Sensitive Discovery Material .
FJ_0000045	911 radio transmissions dated on or about April 12, 2022.
FJ_0000046 - FJ_0000920	Reports from 911 calls made on or about April 12, 2022, which have been marked Sensitive Discovery Material .
FJ_0000927 - FJ_0000985	Records from Amazon.
FJ_0000986 - FJ_0000989	Records from Apple.
FJ_0000990 - FJ_0001013; FJ_0001893	Bureau of Prison (“BOP”) records and photographs of the defendant’s backpack and other property seized incident to his arrest on or about April 13, 2022.
FJ_0001038 - FJ_0001042	Records from Best Western and related witness interview.
FJ_0001043 - FJ_0001059	Records from Cash App.
FJ_0001102 - FJ_0001106	Records from Chelsea Hostel and report of related witness interview.
FJ_0001107 - FJ_0001110	Records from Comcast.
FJ_0001111 - FJ_0001115	Records from Comfort Suites and report of related witness interview.
FJ_0001116 – FJ_0001128; FJ_0007323 - FJ_0007345; FJ_0008211	Photographs of the defendant’s Milwaukee, Wisconsin apartment.
FJ_0001293 - FJ_0001296; FJ_0007355 - FJ_0007381; FJ_0007456 - FJ_0007502	Photographs taken on the subway car and subway platform on or about April 12, 2022.

FJ_0001297 - FJ_0001298	Records from Daily Motion.
FJ_0001299 - FJ_0001302; FJ_0007503 - FJ_0007506	Report from Ruger regarding the defendant's purchase of a firearm.
FJ_0001303 - FJ_0001888	Records reflecting, among other things, the defendant's known addresses and related FBI reports.
FJ_0001903 - FJ_0001904	Defendant's Property Invoice.
FJ_0001905 - FJ_0001990	Department of Motor Vehicle records related to the defendant and related FBI reports.
FJ_0008203 - FJ_0008210	Report and associated paperwork regarding the defendant's purchase of a firearm.
FJ_0001991 - FJ_0001992	Records from Dropbox.
FJ_0001993 - FJ_0002041	Records from East Bank Storage and related witness interview.
FJ_0002042 - FJ_0002051	Records from Evolve Vacation Rental.
FJ_0002052 - FJ_0002613	Records from Evolve Bank.
FJ_0001614 - FJ_0002615	Records from Experian.
FJ_0008213 - FJ_0008308	Reports which include the statements of potential witnesses, which have been marked Sensitive Discovery Material .
FJ_0008309 - FJ_0008434;	Reports which include the statements of potential witnesses, including victims of the defendant's mass shooting, which have been marked Sensitive Discovery Material .
FJ_0008435 - FJ_0009696	Reports and associated documents related to civilian tips the FBI received through fbi.gov/brooklynshooting between approximately April 12, 2022 and May 4, 2022, which have been marked Sensitive Discovery Material .
FJ_0009737 - FJ_0009791	Reports and associated documents related to civilian tips the FBI received through the FBI main tip line, which have been marked Sensitive Discovery Material .
FJ_0002827 - FJ_0002970	FBI reports and related attachments regarding civilian tips, which have been marked Sensitive Discovery Material .
FJ_0009859 - FJ_0011393	FBI reports and related attachments. FJ_0009859 - FJ_0009891 have been marked Sensitive Discovery Material .
FJ_0009792 - FJ_0009808 & FJ_0002837	FBI reports regarding video collection and related attachments.

FJ_0002971 - FJ_0002976	Records reflecting the defendant's fingerprints and related FBI report.
FJ_0002977 - FJ_0002984	Records and FBI and ATF reports reflecting firearms tracing and purchasing.
FJ_0002985 - FJ_0003074	Records of Phantom Fireworks and related witness interviews and correspondence.
FJ_0003075 - FJ_0003076	Records of Vance Outdoors.
FJ_0003077 - FJ_0003089	Records of FS Avenger and related witness interview.
FJ_0003090 - FJ_0003102	Records reflecting firearm purchase.
FJ_0003103 - FJ_0003113	Records from Google.
FJ_0003114 - FJ_0003116	Records from Home Depot.
FJ_0003117 - FJ_0003150	Records from Hotels.com.
FJ_0003151 - FJ_0003338	Records from Huntington Bank.
FJ_0003339 - FJ_0003341	Records from Instacart.
FJ_0003342 - FJ_0003347	Records from Lalor Self Storage and related witness interview.
FJ_0003348 - FJ_0003351	Records from Lyca Mobile.
FJ_0003352 - FJ_0003359	Records from Lyft.
FJ_0000921 - FJ_0000926	Records from Manhattan Mini Storage.
FJ_0003360 - 0003361	Records from Master Card.
FJ_0007393 - FJ_0007404	Photographs and videos obtained from social media and witnesses.
FJ_0007405 - FJ_0007423	Records from PNC Bank.
FJ_0007424 - FJ_0007438	Records from the United States Post Office and related FBI reports.
FJ_0007439 - FJ_0007452	Records from Port Authority.
FJ_0007507 - FJ_0007535	Records from Safeguard Self Storage.
FJ_0007536	Records from Sutton Bank.

FJ_0011394 - FJ_0011583	Search warrant application and search warrant for the defendant's storage unit at a self-storage facility located on North Broad Street, Philadelphia, Pennsylvania; records, photographs and information relating to the execution of the search warrant; forensic images and extractions of electronic devices seized during the execution of the search warrant.
FJ_0011584 - FJ_0012086	Search warrant application and search warrant for the defendant's rental property located on West Ontario Street, Philadelphia, Pennsylvania; records, photographs and information relating to the execution of the search warrant and provided by witnesses.
FJ_0012383 - FJ_0012501	Search warrant application and search warrant for the defendant's backpack; records, photographs and information relating to the execution of the search warrant; forensic images and extractions of an electronic device seized during the execution of the search warrant.
FJ_0012342 - FJ_0012382	Search warrant application and search warrant for the collection of a buccal swab DNA sample from the defendant; records and information relating to the execution of the search warrant.
FJ_0012502 - FJ_0012801	Search warrant applications and search warrants for location and account information relating to the defendant's mobile telephones; and records and information obtained from service providers pursuant to the search warrants.
FJ_0012087 - FJ_0012093	Search warrant application and search warrant for the smartphone electronic device abandoned by the defendant at the scene of the attack; records and information relating to the execution of the search warrant; forensic extraction of the electronic devices seized pursuant to the search warrant.
FJ_0012094 - FJ_0012341	Search warrant application and search warrant for the U-Haul van rented by the defendant; records, photographs and information relating to the execution of the search warrant and to the defendant's rental of the U-Haul van; forensic extraction of an electronic device seized during the execution of the search warrant.
FJ_0007537 - FJ_0007657	Records from T-Mobile.
FJ_0007658 - FJ_0007663	Records from Tracfone.
FJ_0007664 - FJ_0007668	Records from TransUnion.

FJ_0007669 - FJ_0007675	Records from Twitter.
FJ_0007676 - FJ_0007688	Photographs from the defendant's U-Haul.
FJ_0007689 - FJ_0007725	Records from U-Haul.
FJ_0007726 - FJ_0008122	Records from US Bank.
FJ_0008123 - FJ_0008138	Vehicle Detection Report for the U-Haul van rented by the defendant.
FJ_0008139 - FJ_0008146	Records from Verizon.
FJ_0008147 - FJ_0008192	Complaint in <u>Steur v. Glock Inc. et al.</u>
FJ_0008193 - FJ_0008194	Records from Walmart.
FJ_0008195	Records from Western Union.
FJ_0008196 - FJ_0008201	Records from the Wisconsin Division of Motor Vehicles.
FJ_0008202	Records from Yahoo.
FJ_0012840 – FJ_0013330	Surveillance video footage collected from various locations and reports indicating videos in which the defendant has been observed.
FJ_0003362 - FJ_0003369; FJ_0004347	Records from the Metropolitan Detention Center.
FJ_0003370 - FJ_0004044	Records from Meta.
FJ_0004233 - FJ_0004313	Records from the MTA and related FBI reports, some of which have been marked Sensitive Discovery Material .
FJ_0004314 - FJ_0004345	Records from New Jersey Transit.
FJ_0004346	Records from New Jersey Turnpike.
FJ_0004349 - FJ_0004368	Law enforcement reports related to the investigation of the subway shooting.
FJ_0004369 - FJ_0004448	Video collected by the NYPD related to the subway shooting and the defendant's location before and after the shooting.
FJ_0004449 - FJ_0004484	NYPD complaint reports.

FJ_0004485 - FJ_0004535	Reports related to Crime Stoppers tips the NYPD received regarding to the subway shooting, which have been marked Sensitive Discovery Material .
FJ_0004536 - FJ_0004651	Reports from the NYPD's Enterprise Case Management System ("ECMS").
FJ_0004652	NYPD radio run audio files dated on or about April 12, 2022.
FJ_0004653 - FJ_0004656	Report and accompanying video shown to a victim of the subway shooting on or about April 12, 2022, which have been marked Sensitive Discovery Material .
FJ_0005939 - FJ_0006135	NYPD Property Clerk Invoices.
FJ_0007306 - FJ_0007308	Records from Oooma.
FJ_0009809 - FJ_0009833	Open-source information collected by private-sector firm.
FJ_0009834 - FJ_0009857	Open-source information collected by private sector firm.
FJ_0007309	Open-source records from the Citizen Application.
FJ_0012802 - FJ_0012839	Records from PayPal.
FJ_0007310 - FJ_0007319	Records related to the defendant's passport application.
FJ_0007320 - FJ_0007322	Records from Penske.
FJ_0007346 - FJ_0007354	Photographs of the defendant's notebook.

You may examine any physical evidence discoverable under Rule 16, including original documents, by contacting me to arrange a mutually convenient time.¹

D. Reports of Examinations and Tests

Bates Numbers	Description
FJ_0001014 - FJ_0001037	Reports from the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF").
FJ_0001060- FJ_0001101	Draft reports regarding defendant's location history.

¹ The Bates number FJ_0004045 - FJ_0004115 have been intentionally omitted from this production.

FJ_0004657 - FJ_0004693	NYPD Bomb Squad reports.
FJ_0004694 - FJ_0005485; FJ_0006136 - FJ_0006345	Reports and accompanying photographs from the NYPD Laboratory Criminalist Section.
FJ_0005486 - FJ_0005615	Reports from the NYPD Laboratory Firearms Analysis Section.
FJ_0005616 - FJ_0005938	Reports from the New York City Office of Chief Medical Examiner (“OCME”).
FJ_0006346 - FJ_0007305	NYPD Request for Laboratory Examination.
FJ_0002616 - FJ_0002826; FJ_0008212	FBI Laboratory Reports.

The government will provide you with copies of additional reports of examinations or tests in this case as they become available.

E. Expert Witnesses

The government will comply with Fed. R. Crim. P. 16(a)(1)(G) and Fed. R. Evid. 702, 703 and 705 and notify you in a timely fashion of any expert that the government intends to call at trial and provide you with a summary of the expert’s opinion.

The identity, qualifications, and bases for the conclusions of each expert will be provided to you when they become available.

At this time, the government anticipates that it will call experts to testify about the following categories: explosives analysis, geolocation analysis, bullet trajectory analysis, firearm and ammunition analysis, fingerprint analysis, DNA analysis, and handwriting analysis, among other categories.

F. Brady Material

While not exculpatory pursuant to Brady v. Maryland, 373 U.S. 83 (1963), in an abundance of caution, the government is disclosing that in the chaotic aftermath of the shooting which occurred during New York City’s morning rush hour commute, at which time the defendant set off a smoke bomb to obscure his identity, multiple victims and witnesses provided descriptions of the mass shooter to law enforcement officers, including but not limited to reports that the mass shooter was approximately five feet and five inches tall, and wearing a gasmask, goggles, and different colored construction vests. Law enforcement officers also received thousands of tips from civilians related to the shooting. Although these tips do not fall under Rule 16 of the Federal Rules of Criminal Procedure, the government has produced these tips in an abundance of caution as noted above.

The government is not aware of any exculpatory material regarding the defendant. The government understands and will comply with its continuing obligation to produce exculpatory material as defined by Brady, and its progeny.

Before trial, the government will furnish materials discoverable pursuant to Title 18, United States Code, Section 3500, as well as impeachment materials. See Giglio v. United States, 405 U.S. 150 (1972).

G. Other Crimes, Wrongs or Acts

The government will provide the defendant with reasonable notice in advance of trial if it intends to offer any material under Fed. R. Evid. 404(b).

II. The Defendant's Required Disclosures

The government hereby requests reciprocal discovery under Rule 16(b) of the Federal Rules of Criminal Procedure. The government requests that the defendant allow inspection and copying of (1) any books, papers, documents, data, photographs, tapes, tangible objects, or copies or portions thereof, that are in the defendant's possession, custody or control, and that the defendant intends to introduce as evidence or otherwise rely on at trial, and (2) any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, that are in the defendant's possession, custody or control, and that the defendant intends to introduce as evidence or otherwise rely upon at trial, or that were prepared by a witness whom the defendant intends to call at trial.

The government also requests that the defendant disclose prior statements of witnesses who will be called by the defendant to testify. See Fed. R. Crim. P. 26.2. In order to avoid unnecessary delays, the government requests that the defendant have copies of those statements available for production to the government no later than the commencement of trial or the hearing at which such witnesses will testify.

The government also requests that the defendant disclose a written summary of testimony that the defendant intends to use as evidence at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence. The summary should describe the opinions of the witnesses, the bases and reasons for the opinions, and the qualification of the witnesses.

Pursuant to Fed. R. Crim. P. 12.3, the government hereby demands written notice of the defendant's intention, if any, to claim a defense of actual or believed exercise of public authority, and also demands the names and addresses of the witnesses upon whom the defendant intends to rely in establishing the defense identified in any such notice.

IV. Future Discussions

If you have any questions or requests regarding further discovery or a disposition of this matter, please do not hesitate to contact me.

Please be advised that, pursuant to the policy of the Office concerning plea offers and negotiations, no plea offer is effective unless and until made in writing and signed by authorized representatives of the Office. In particular, any discussion regarding the pretrial disposition of a matter that is not reduced to writing and signed by authorized representatives of the Office cannot and does not constitute a “formal offer” or a “plea offer,” as those terms are used in Lafler v. Cooper, 132 S. Ct. 1376 (2012), and Missouri v. Frye, 132 S. Ct. 1399 (2012).

Very truly yours,

BREON PEACE
United States Attorney

By: _____ /s/
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Enclosures

cc: Clerk of the Court (WFK) (by ECF) (without enclosures)